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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,977	10/09/2003	GARRY TSAUR		7798

29745 7590 09/29/2006

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,977

Applicant(s)

TSUR, GARRY

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 4-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

It is initially noted that new claims 17-27 (filed 6/20/05) are all directed to a non-elected embodiment, i.e., claims 17-21 all define a hole in the housing, which is not present in elected Species I (shown in Figure 1), claims 22-24 recite a compression member, which is directed toward Species 4 (Figure 4), but not present in the elected embodiment and claims 25-27 recite a piston member with a piston head, which is directed to Species V (Figure 5), but not present in the elected embodiment. Accordingly, claim 1-3 read on the elected embodiment and will be examined herein while claims 4-27 are withdrawn from further consideration.

Abstract

The abstract of the disclosure is objected to because phrases that can be implied, such as "is disclosed" (see line 2) should not be present therein. Correction is required. See MPEP § 608.01(b).

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitation "generally constant diameter" (see claim 1, line 2) does not have antecedent basis in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 remains rejected under 35 U.S.C. 102(b) as being anticipated by Langhjelm et al. (hereinafter Langhjelm). Langhjelm discloses an applicator with a piston comprised of a “generally constant diameter” elongated tubular housing 62 (see Figure 7) with an applicator tip 76 disposed at one sealed end and a piston 66 disposed near a second end with a liquid or viscous substance disposed therebetween and an opening means 74 provided at the location of the applicator tip which will allow the sealed end to be removed to expose the applicator tip wherein the liquid or viscous substance is sealed within the housing and may be extracted through the tip when the piston is urged toward the tip by applying pressure on the housing from an end opposite the substance (see column 2, lines 30-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Langhjem in view of Zakensberg. Although the opening means in the Langhjem device is a threaded cap and not a breakable fracture line, as claimed, attention is directed to the Zakensberg reference, which discloses another container having an opening means wherein the opening means is in the form of a fracture line 20 in order to enable the container to be more efficiently formed and opened. Accordingly, it would have obvious to one of ordinary skill in the art at the time the invention was made to replace the threaded cap in the Langhjem device with such a break-away closure, as taught by Zakensberg, in order to render the Langhjem device easier/quicker to open as well as form the device in a more efficient manner.

Claim 3 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Langhjem in view of Dombroski et al. (hereinafter Dombroski). Although the opening 78 in the Langhjem device does not include a film thereover, attention is directed to the Dombroski reference, which discloses another container wherein the opening therein is covered with a film 38 in order to render the device tamperproof (see the paragraph bridging columns 1 and 2). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a film over the opening 78 in the Langhjem device in order to render that device tamperproof.

Response to Arguments

Applicant's arguments filed 6/20/05 have been fully considered but they are not persuasive. The Applicant contends that the Langhjem reference is no longer

applicable against claim 1 in that this reference does not disclose a housing have a generally constant diameter. The Examiner contends, however, that the housing 62 disclosed by Langhjelm can be considered a housing have a "generally" constant diameter. For example, even though the end of the housing has a tapered end 68, the overall structure of the housing has a "generally" constant diameter, i.e, as the majority of the length of the housing has a constant diameter, the overall housing can be described as having a "generally" constant diameter.

It is further noted that the limitation "generally constant diameter" has not been given any special definition in the specification (as discussed above, this limitation has not been defined in the specification). Because of the lack of a definition of this limitation, the Examiner is given a wide latitude when interpreting this limitation. Accordingly, the Examiner considers the housing in the Langhjelm device to have a "generally" constant diameter.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

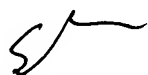
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
9/26/06